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Judgment of the Court in Case C-292/23 | European Public Prosecutor's Office (Judicial review of procedural acts)

The procedural acts of the European Public Prosecutor's Office (EPPO) that are capable of affecting the legal situation of the persons challenging them must be amenable to judicial review

However, it is not mandatory for that review to take the form of a direct action, provided that it includes a verification that the rights and freedoms of the person concerned are observed

The procedural acts of the EPPO that are capable of affecting the legal situation of the persons challenging them must be amenable judicial review. It is for the national court to determine whether that is the case, by means of a concrete and specific examination.

However, the review does not have to take the form of a direct action unless that type of action is provided for in the national law for the purpose of directly challenging an analogous decision of the national authorities.

The EPPO is an independent body of the European Union which is responsible for investigating, prosecuting and bringing to judgment the perpetrators of criminal offences affecting the financial interests of the European Union. It is organised at two levels: first, a central level, consisting of the Central Office at the seat of the EPPO, in Luxembourg, and, secondly, a decentralised level, consisting of European Delegated Prosecutors who are to be located in the Member States.

The EPPO is conducting, in Spain, a criminal investigation for EU subsidy fraud. The European Delegated Prosecutors handling the case summoned two persons as witnesses.

The persons who are the subject of the investigation challenged the summons to appear of one of the witnesses. The court responsible, in Spain, for the judicial review of investigation measures of the EPPO, has seised the Court of Justice. It indicates that the Spanish law permits judicial review only in certain cases expressly provided for, which do not include a witness summons. It considers, however, that that act is capable of producing legal effects vis-à-vis third parties. It considers, therefore, that it should be possible to exercise the review, which is provided for by EU law,¹ for this type of act in order to avoid an unjustified restriction of rights derived from EU law.

In its judgment, the Court emphasises that it is for the **competent national court to determine**, after carrying out a concrete and specific examination, whether the witness summons is capable of **affecting the legal situation** of the persons who are the subject of the investigation. If that is the case, it must be **subject to judicial review by the court**.

That requirement does not necessarily mean that **that review** must be made by way of a specific and **direct action**. It may **also** be carried out **as an incidental question** provided that the right to an effective remedy and to a fair trial as well as the presumption of innocence and the rights of the defence are guaranteed.

However, **where a direct action is provided for** in order to challenge **an analogous decision of national authorities**, the **same possibility** must exist as regards **acts of the EPPO**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Council Regulation \(EU\) 2017/1939](#) of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office.